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8 Attorneys for ALLSTATE PROPERTY AND
CASUALTY INSURANCE COMPANY

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA, SOUTHERN DIVISION
11

12 ALLSTATE PROPERTY AND CASUALTY
13 INSURANCE COMPANY,

14 Plaintiff,

15 v.

16 JEFF TORTORA, individually; DANIEL
JOSEPH FACCHIAN, an individual; TCB
17 LAS VEGAS, LLC dba COUNT'S VAMP'D
ROCK BAR & GRILL; COUNTS
18 KUSTOMS, LLC; DOE SECURITY GUARD
EMPLOYEE; ROE SECURITY COMPANY;
19 DOES I through X; and ROE
CORPORATION, XI through XX, inclusive,
20 jointly and severally,

21 Defendants.
22

Case No. 2:20-cv-00078-APG-BNW

**MOTION TO ENLARGE TIME TO
SERVE DEFENDANTS**

23 COMES NOW, Plaintiff ALLSTATE PROPERTY AND CASUALTY INSURANCE
24 COMPANY("ALLSTATE"), by and through its attorneys of record of the law firm McCORMICK,
25 BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP, hereby moves this Honorable Court
26 pursuant to FRCP 4(e) and NRCP 4(e)(1), for Order enlarging the time to serve Defendants
27 TORTORA, FACCHIAN and COUNTS KUSTOMS, LLC.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION AND FACTUAL BACKGROUND**

4 This dispute arises out of an incident that occurred during a band performance by Defendant
5 TORTORA, on June 23, 2018 at a Club called "Counts Vamp'd Bar & Grill" in Las Vegas.
6 TORTORA was a performer in the band Tinnitus playing at the Club. According to Plaintiff's
7 investigation, during the course of the concert at the Club the claimant, Defendant FACCHIAN,
8 gestured at TORTORA encouraging him to "dive" into the audience, presumably to perform a
9 maneuver that is often referred to as "crowd surfing". Unfortunately, FACCHIAN was unable to hold
10 TORTORA and they both fell. The band, Tinnitus, for which TORTORA is the lead singer, was
11 performing at the bar for compensation. As a result, FACCHIAN filed suit against TORTORA and
12 the other Defendants for personal injuries on June 13, 2019 (hereinafter "Underlying Suit"). Allstate
13 is defending TORTORA under a reservation of rights.

14 Based on the foregoing, Allstate filed a Complaint for Declaratory Relief on January 13, 2020.
15 See Document No. 1. On January 14, 2020, this Court issued an Order to Show Cause Why The This
16 Action Should Not Be Dismissed. On February 7, 20102, Plaintiff responded to the OSC See
17 Document No. 6, and on February 18, 2020, the Court ruled on its Order to Show Cause and allowed
18 this matter to proceed forward. See Document No. 8. Plaintiff's counsel sent the Summons and
19 Complaint for Declaratory Relief out for service with First Legal, a process server, so that proper
20 service could be effectuated on all Defendants. See Exhibit 1, *Declaration of Plaintiff's Counsel*,
21 para. 4.

22 As set forth in the Declaration, Count's Vamp'd Rock Bar & Grill was served on March 12,
23 2020, by a process server with First Legal. Exhibit A to *Declaration of Plaintiff's Counsel*. On
24 March 11, 2020, a process server with First Legal attempted to serve the Summons and Complaint for
25 Declaratory Relief upon Counts Kustoms, LLC's Registered Agent as listed with the Nevada
26 Secretary of State, Kimberly D. Koker at 9030 W. Sahara Avenue, Suite 299, Las Vegas, Nevada
27 89117. When First Legal went to that address, it was discovered to be a UPS Post Office Box and the
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1 Clerk at said location advised that the company, registered agent, and none of the listed officers for the
2 company had a box at the store. Exhibit B to *Declaration of Plaintiff's Counsel*. On March 14, 2020,
3 a process server with First Legal attempted to serve the Summons and Complaint for Declaratory
4 Relief upon Daniel Joseph Facchian at the last known address know to Plaintiff (4400 S. Jones
5 Boulevard, #2043, Las Vegas, Nevada 89103). When First Legal went to that address, they were
6 advised by the current resident of one week, that they did not know Mr. Facchian and no additional
7 information could be obtained at that location. Plaintiff ordered that a skip trace be conducted and an
8 additional possible address was discovered. First Legal sent a process served to the new address
9 (5456 Overland Express Street, Las Vegas, Nevada 89118) but that address was also unsuccessful.
10 The landlord advised that Mr. Facchian no longer lives that. Exhibit C to *Declaration of Plaintiff's*
11 *Counsel*. From March 10 to March 16, 2020, four attempts were made by process servers with First
12 Legal to serve the Summons and Complaint for Declaratory Relief upon Jeff Tortora at the last known
13 address know to Plaintiff (4497 La Roca Circle, Las Vegas, Nevada 89121). Each time First Legal
14 went to that address no one answered the door. Plaintiff ordered that a skip trace be conducted and an
15 additional possible address was discovered. To date service at that address has not been successful.
16 Exhibit D to *Declaration of Plaintiff's Counsel*. Plaintiff's counsel has also sent letters to attorneys
17 asking whether they can accept service for Defendants Facchian and Kounts Customs LLC. Exhibit
18 E to *Declaration of Plaintiff's Counsel*.

22 **II.** **LEGAL ARGUMENT**

23 **A. MOTION TO ENLARGE TIME TO SERVE ALL DEFENDANTS**

24 Local Rule of Practice for the United States District Court for the District of Nevada, LR IC 3-
25 1, states in relevant part: "In the absence of a court order, the applicable Federal Rules, statutes, or
26 local rules govern computing and extending time for serving and filing of all documents
27 notwithstanding any contrary deadline in a Notice of Electronic Filing."

28 FRCP 6(b) provides:

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III.
CONCLUSION

Based on the foregoing, Plaintiff ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY an Order enlarging the time to serve all Defendants to a date of ninety (90) days after the date of the Court's order granting this Motion.

DATED this 10th day of April, 2020

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By /s/ Wade M. Hansard

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Attorneys for ALLSTATE PROPERTY AND
CASUALTY INSURANCE COMPANY

6763024.1

IT IS SO ORDERED

DATED: April 13, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 10th day of April, 2020, a true and correct copy of **MOTION TO**
3 **ENLARGE TIME TO SERVE DEFENDANTS** was served via the United States District Court
4 CM/ECF system on all parties or persons requiring notice.

5
6 By /s/ Cheryl A. Schneider
7 Cheryl A. Schneider, an Employee of
8 MCCORMICK, BARSTOW, SHEPPARD,
9 WAYTE & CARRUTH LLP
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